

Remarks

Election of Claims

Applicant provisionally elects to prosecute Claims 1, 2, 4, 7, 9-13, 18 of Species A with traverse.

Background of the Law

There are two criteria for a proper requirement for restriction between patentably distinct inventions: (A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05 - § 806.05(i)); and (B) There must be a serious burden on the examiner if restriction is required (see MPEP § 803.02, § 806.04(a) - § 806.04(i), § 808.01(a), and § 808.02).

The term “distinct” means that two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made, etc., but are capable of separate manufacture, use, or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER (though they may each be unpatentable because of the prior art). It will be noted that in this definition the term related is used as an alternative for dependent in referring to subjects other than independent subjects. MPEP §802.01. And a serious burden on the examiner may be *prima facie* shown, if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP§ 808.02.

Where inventions as disclosed and claimed are both (A) species under a claimed genus and (B) related, then the question of restriction must be determined by both the practice applicable to election of species and the practice applicable to other types of restrictions such as those covered in MPEP § 806.05 - § 806.05(i). If restriction is improper under either practice, it should not be required. 806.04(b). 37 CFR 1.141 provides that a reasonable number of species may still be claimed in one application if the other conditions of the rule are met. MPEP 806.04(a)

Argument

I. Examiner has not demonstrated a Serious Burden

The Examiner has not demonstrated a serious burden by appropriate explanation of separate classification, separate status in the art, or a different field of search. MPEP§ 808.02. The Examiner has indicated that Species A includes the “bottom outer layer has heat reflective elements dispersed throughout the polymer”; while Species B includes the “bottom layer has heat reflective material applied thereto”. Material dispersed in the polymer versus material applied to the layer does not vindicate a separate status in the art, separate classification, or different field of search. Each embodiment of the invention discloses that the bottom outer layer is “impregnated or coated with a heat reflective material”. ¶0029, ¶0030, ¶0037, ¶0041. The Examiner’s statement that the species are “distinct because they contain two distinct reflective structures for the bottom layer” is a conclusory explanation for a restriction requirement, providing no real evidence in support thereof.

Moreover, the Examiner has misconstrued Applicant’s claims and unnecessarily issued another restriction requirement. Most notably, the Examiner’s attention is drawn to Species A Claim 1, which includes a “**bottom outer layer** comprising a polymer having heat reflective elements disperse throughout said polymer”; while Species B Claim 6 includes “**plurality of insulative elements** and said **flat non-insulative layer** have reflective material applied thereto”. Claim 1 and Claim 6 include different structural elements that have different reflective elements, and are not species. Claim 1’s bottom outer layer and Claim 6’s flat insulative layer are not the same structural elements and the heat reflective material is contained differently in these elements. The same is true for Claim 23 of Species B, which includes “at least one of said **bubble-forming layer** and said second bubble-forming layer having reflective material thereto”, where the bubbling-forming layer is not the same structural element as the “bottom outer layer” of Claim 1 Species A.

Consequently, the Examiner’s misconstruction of Applicant’s claims and lack of support for a separate classification render’s the restriction requirement inappropriate by lack of serious burden on the Examiner.

II. Claim 14 is not a generic claim

In general, a generic claim should require no material element additional to those required by the species claims, and each of the species claims must require all the limitations of the generic claim. MPEP 806.04(d). Claim 14 includes an additional material element of “a second bubble type heat insulative layer” compared to Claim 1 of Species A. And all of the species claims that the Examiner cites do not require all the limitations of Claim 14, i.e. Claim 1 does not claim “a second bubble-type heat insulative layer” of Claim 14. Therefore, Claim 14 is not a generic claim.

III. Species A and Species B are not Independent or Distinct mutually exclusive

Species A and Species B are not independent, because Claims 1, 7, and 18 are related to Claims 6, 15, 17, 19, and 23-26 of Species B by way of numerous elements, i.e. outer layer, top layer, insulative elements, moisture impervious chamber, etc.

Species A and Species B are not distinct because such heat reflective material, either impregnated or coated, is available as Silver, Product No. MT1065F from Color Master Inc., of Avilla, Indiana 46710. ¶0030. As such, alternative reflective material is readily available to one of ordinary skill in the art as to render Species A or Species B independent or mutually exclusive for a restriction requirement.

Conclusion

In light of the preceding discussion, Applicant provisionally elects Species A with traverse. On this basis, Applicant submits that the claims have been improperly restricted.

No fees are believed due with this response, however, the Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Rosenbaum & Associates, P.C. deposit account No. 18-2000.

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Should the Examiner require any further information or wish to discuss an aspect of this Response, the Examiner is encouraged to telephone the undersigned at the telephone number set forth below.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'J. Peter Paredes', written in a cursive style.

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